IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 249 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAMIR IBRAHIM SHAIKH

Versus

THE STATE OF GUJARAT

Appearance:

MS DR KACHHAVAH for Petitioner

MR KAMLESH KACHHAVAH for Petitioner

MR IM PANDYA APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 19/04/2005

ORAL JUDGEMENT

1. By way of filing this Application, the petitioner has challenged the order dated 31st of August, 2004,

passed by the Sub-Divisional Magistrate, Ankleshwar, in exercise of powers conferred upon him under Section 56(a) of the Bombay Police Act, 1951, by which the petitioner came to be externed for two years from the District of Bharuch and other contiguous districts. The petitioner preferred a statutory Appeal under Section 60 of the Bombay Police Act against the above said order of Sub-Divisional Magistrate, Ankleshwar, before the Competent Authority, but the said Appeal came to be dismissed by the Competent Authority vide order dated 08th of October, 2004. Both the orders are challenged in this Special Criminal Application.

2. A notice was issued against the petitioner on 31st of May, 2004, in exercise of powers conferred upon the competent authority under Section 59(1) of the Bombay Police Act for externment of the petitioner under Section 56(a) of the Bombay Police Act. Allegations were made that the petitioner was a headstrong person and committing the act of bullying tactics, assault, rape, threatening innocent citizens to kill, etc. The externing authority took into consideration two criminal cases filed against the petitioner under the Indian Penal Code. One for the offence punishable under Section 394 of the IPC and second for the offence punishable under Section 325 of the Indian Penal Code. The externing authority also took into consideration three Chapter Cases filed against the petitioner in pursuance of Sections 110(h) and 107 of the Code of Criminal Procedure. The externing authority also took into consideration the in-camera statements of the witnesses.

3. On serving of show cause notice, the petitioner filed his reply on 5th of July, 2004, but, however, on the date of hearing , none remained present before the externing authority on behalf of the petitioner. Therefore, after taking into consideration the deposition of the complainant and the record of criminal cases filed against the petitioner as well as in-camera statements, the order impugned in this Special Criminal Application came to be passed. It is pertinent to note that in his order the externing authority also took into consideration one more criminal case filed against the petitioner on 5th of May, 2004 for the offences punishable under Sections 323, 324, 504, etc. Undoubtedly, this case came to be filed during this externment proceeding.

4. Learned Advocate Mr. Kamlesh Kachhavah for the petitioner and learned APP Mr. I.M. Pandya for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and controverted and opposed by learned APP, the matter can be examined and disposed of on the sole issue whether the externing authority applied its mind properly to the material placed before him and whether the order vitiates on the ground of taking extraneous material into consideration.

6. It is established fact that notice for the externment was issued against the petitioner under Section 56(a) of the Bombay Police Act, 1951. In this respect, the activities of the petitioner causing alarm, danger or harm to person or property, the detaining authority took into consideration some criminal cases and Chapter Cases filed against the petitioner. However, in his order, the externing authority also took into consideration a criminal case registered against the petitioner before Hansot Police Station on 5th of May, 2004. Undoubtedly, this case was not referred to in the notice issued to the petitioner under Section 59(1) of the Bombay Police Act, 1951. This fact vitiates the order of the externing authority on the ground that the material which were not referred to in the notice under Section 59(1) was taken into consideration by the externing authority in arriving at the subjective satisfaction to extern the petitioner. Further, in last para, it is also mentioned that the case registered against the petitioner on 5th of May, 2004, during the proceedings of externment, proceedings were registered under Part-II. Meaning thereby that the externing authority took into consideration this case for the grounds under Section 56(b) of the Bombay Police Act, 1951. It is also mentioned that the other cases also were filed in First Part of the Indian Penal Code. This leads to the conclusion that though the notice was issued under Section 56(a) of the Bombay Police Act, the material was considered to be material for the grounds of Section 56(b) of the Bombay Police Act, 1951, for which, no notice was issued to the petitioner under Section 59(1) of the Bombay Police Act, 1951. Therefore, both the orders, the order of externing authority as well as the order of appellate authority are required to be set aside on above referred two grounds.

7. In the result, for the reasons aforesaid, the petition is allowed. The order dated 31.8.2004 passed by the Sub-Divisional Magistrate, Ankleshwar, directing externment of the petitioner from the District of Bharuch and other contiguous Districts, and the order dated 8th of October, 2004, passed by the Appellate Authority on

1st of December, 2004, confirming the order of the Sub-Divisional Magistrate, Ankleshwar, are hereby quashed and set aside. Rule is made absolute. DS permitted.

(J.R. Vora, J.)

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